International Labour Conference
84th (Maritime) Session 1996

REPORT III

# Revision of the Placing of Seamen Convention, 1920 (No. 9)

INTERNATIONAL LABOUR OFFICE GENEVA

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Third item on the agenda

INTERNATIONAL LABOUR OFFICE GENEVA

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# Introduction

At its 262nd Session (March-April 1995) the Governing Body of the International Labour Office examined the report of the Tripartite Meeting on Maritime Labour Standards (Geneva, November-December 1994) and decided to include an item on the revision of the Placing of Seamen Convention, 1920 (No. 9), in the agenda of the 84th (Maritime) Session of the International Labour Conference.

It also decided that the Tripartite Meeting would be considered as a Preparatory Technical Maritime Conference and that, in accordance with article 38, paragraph 4(b), of the Standing Orders of the International Labour Conference, the Office would draw up a final report on this item on the basis of the work of the Tripartite Meeting on Maritime Labour Standards. As part of a series of measures to safeguard the financial position of the ILO, the Governing Body at its 263rd Session (June 1995) decided to postpone the holding of the Maritime Session of the Conference scheduled for January 1996. At its 264th Session (November 1995) the Governing Body decided that the Conference should be held at the end of 1996 or at the beginning of 1997.

The background to these decisions is summarized below.

The First Session of the International Labour Conference in Washington in 1919 adopted the Unemployment Convention (No. 2). Article 2 of the Convention imposes an obligation on each Member of the Organization which ratifies the Convention to establish a system of free public employment agencies under the control of a central authority. Where both public and private free employment agencies exist, steps should also be taken to coordinate the operations of such agencies on a national scale. The Unemployment Recommendation (No. 1), adopted at the same session of the Conference, provides that each Member of the Organization should take measures to prohibit the establishment of employment agencies which charge fees or which carry on their business for profit. Where such agencies already exist they should be permitted to operate only under government licence, and all practicable measures should be taken to abolish them as soon as possible.

Since neither the Convention nor the Recommendation were drafted with specific reference to the needs of seafarers, the question of applying the principles laid down in them to seafarers, with specific provisions on recruitment and placement facilities, was included in the agenda of the Second (Maritime) Session of the International Labour Conference (Genoa, 1920). As a result, the Placing of Seamen Convention, 1920 (No. 9), was adopted by the Conference.

The Convention came into force in November 1921 and had been ratified by 38 countries as of 31 December 1994. The Convention lays down the same basic principles as in the Unemployment Convention (No. 2) and Recommendation (No. 1) of 1919, with an obligation on ratifying member States to establish a system of free public employment offices (Article 4); in addition, it contains provisions, where commercial employment agencies exist, for their temporary continuation under government licence and supervision pending their abolition (Article 3). The primary purpose of the Convention was to abolish agencies which charged fees for finding employment for seafarers (Article 2) and to introduce standards for the establishment and operation of an adequate system of public employment offices for the placing of seafarers without charge. The Convention stipulates that such offices are to be organized and maintained either by representative associations of shipowners and seafarers jointly under the control of a central authority, or by the State itself (Article 4). Committees composed of an equal number of shipowners' and seafarers' representatives are to advise upon the operation of these offices (Article 5); certain provisions are included to protect the rights of the parties concerned (Articles 6 and 7) and to extend reciprocal facilities to the seafarers of other ratifying States (Article 8).

At its 31st Session (1948) the Conference adopted the Employment Service Convention (No. 88) and the Employment Service Recommendation (No. 83). The Convention sets out the main principles on which an employment service should be based and the Recommendation contains detailed guidance on the means of providing an efficient service. Neither the Convention nor the Recommendation excludes seafarers.

When considering employment services for the recruitment and placement of seafarers and a possible revision of the Placing of Seamen Convention, 1920 (No. 9), it would be helpful to keep in mind the principles laid down in the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), even though the Convention does not apply to seafarers.

The first Convention on fee-charging employment agencies was adopted in 1933 and provided for their abolition, with a few temporary exceptions. The Convention did not apply to seafarers. It was ratified by only a very small number of countries. The revised Convention, the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), gives ratifying member States the alternative of accepting either Part II of the Convention and committing themselves to the progressive abolition of fee-charging employment agencies conducted with a view to profit and the regulation of non-profit-making agencies, or Part III which provides for the regulation of all fee-charging agencies. In the latter case, a ratifying State may at a later date opt to accept Part II of the Convention.

Whereas the outright prohibition of fee-charging agencies, introduced in 1933 for workers other than seafarers, was rendered more flexible in 1949 in the light of the difficulties experienced by numerous member States, the parallel prohibition of fee-charging agencies for seafarers, introduced in 1920, has remained unchanged.

As its 254th Session (November 1992) the Governing Body of the ILO decided to place on the agenda of the 81st Session of the International Labour Conference (June 1994) a general discussion item on the role of private employment agencies in the functioning of labour markets.

The Office report to the Conference [1] examined the role of these agencies in its historical context, analysed their legal status, outlined the controversy between those for and those against private employment agencies, and stated the main issues to be discussed.

The Conference Committee dealing with this item concluded that private employment agencies could most certainly contribute to a well-functioning labour market. However, it acknowledged the need to give special attention to those agencies which placed workers abroad and to the serious consequences of some unfair practices for both workers and employers.

Some of the provisions of the Employment of Seafarers (Technical Developments) Recommendation, 1970 (No. 139), are also of interest when considering a revision of Convention No. 9. Part II provides that recruitment of seafarers into the maritime industry should take account of existing manpower plans and of the forecasts contained therein (Paragraph 5), that mobility within the maritime labour force should be facilitated by the operation of an effective employment service (Paragraph 6(1)), and that where the placement of seafarers is the concern of specialized employment offices and where these offices are responsible for finding jobs ashore, placement in such jobs should be facilitated by close collaboration between those offices and the general public employment service (Paragraph 6(2)). In the Preamble of the Recommendation, reference is also made to Convention NO. 9 and to the Employment Service Convention (No. 88) and Recommendation (No. 83) adopted in 1948.

Another ILO instrument, the Continuity of Employment (Seafarers) Convention, 1976 (No. 145), requires that arrangements for the regularization of employment might include the establishment and maintenance of registers or lists, by categories, of qualified seafarers (Article 3). The supplementary Recommendation (No. 154) states that, as far as practicable,

[1] ILO: *The role of private employment agencies in the functioning of labour markets*, Report VI, International Labour Conference, 81st Session, 1994.

systems of allocation of employment should preserve the right of a seafarer to select the vessel on which he or she is to be employed and the right of the shipowner to select the seafarer whom he or she is to engage (Paragraph 3(2)).

According to Article 2(d) of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), a ratifying State undertakes to ensure that "adequate procedures — subject to overall supervision by the competent authority, after tripartite consultation amongst that authority and the representative organizations of shipowners and seafarers where appropriate — exist for the engagement of seafarers on ships registered in its territory and for the investigation of complaints arising in that connection". Ratifying States undertake to ensure that adequate procedures subject to the same form of supervision exist "for the investigation of any complaint made in connection with and, if possible, at the time of the engagement in its territory of seafarers of its own nationality on ships registered in a foreign country, and that such complaint as well as any complaint made in connection with and, if possible, at the time of the engagement in its territory of foreign seafarers on ships registered in a foreign country, is promptly reported by its competent authority to the competent authority of the country in which the ship is registered, with a copy to the Director-General of the International Labour Office".

The Joint Maritime Commission has discussed possible revision of Convention No. 9 a number of times. The 18th Session (1955) of the Joint Maritime Commission decided that, because Convention No. 9 had been ratified by a considerable number of countries and its provisions were widely applied, the revision of the Convention should not be contemplated. However, in its report to the Governing Body the Commission proposed that "consideration should be given to the adoption of an international instrument" to ensure that the engagement of national seafarers for the purpose of crewing foreign ships would only take place through approved employment offices. (During the discussion it was made clear that the proposed instrument was not intended to interfere with accepted recruitment or replacement practices applicable to seafarers of traditional maritime countries, either in their own country or abroad, or with the placement of seafarers by the consular offices of the traditional maritime countries in foreign ports, but would be designed to prevent malpractices in the placing of national seafarers for crewing foreign vessels.)

Following the approval of a text by the Preparatory Technical Maritime Conference in 1956, the Maritime Session of the Conference in 1958 adopted the Seafarers' Engagement (Foreign Vessels) Recommendation, 1958 (No. 107). According to this Recommendation "each Member should do everything in its power to discourage seafarers within its territory from joining or agreeing to join vessels registered in a foreign country unless the conditions under which such seafarers are to be engaged are generally equivalent to those applicable under collective agreements and social standards accepted by bona fide organizations of shipowners and seafarers of maritime countries where such agreements and standards are traditionally observed (Paragraph 1)". Special attention should be paid to whether proper provision is made for repatriation and medical care (Paragraph 2).

Furthermore, under Article 3 of Convention No. 147, a State which has ratified it must, in so far as practicable, advise its nationals as to the possible problems of signing on for employment on a ship registered in a State which has not ratified the Convention, until such advising State is satisfied that standards *equivalent* to those fixed by the Convention are being applied. Article 3 includes the proviso that measures taken to advise in this way must not violate any principle of free movement of workers contained in a treaty to which the advising State and the State of registration are both party; that is to say, if it arises, the principle of free movement of workers takes precedence.

The Joint Maritime Commission, at its 23rd Session (1980), adopted a resolution on employment conditions of seafarers serving in ships flying flags other than those of their own country. It noted, inter alia, that Article 4 of the Placing of Seamen Convention, 1920 (No. 9),

envisages the recruitment of seafarers either jointly by representative associations of shipowners and seafarers or by the State itself, and that Article 2 of the same Convention prohibits the business of finding employment for seafarers for pecuniary gain. The resolution requested the Governing Body of the International Labour Office "to request the Director-General to have the International Labour Office undertake a survey of the extent to which the provisions of Convention No. 9 are observed throughout the world, with a view to determining whether any more effective action by the ILO is necessary, and to report back to the Joint Maritime Commission".

At the 24th Session of the Commission (1984) the question of a possible revision of Convention No. 9 was again on the agenda but the Commission was not able to reach agreement.

In a resolution concerning the recruitment of seafarers and the regulation of fee-charging employment agencies adopted by the 74th (Maritime) Session of the International Labour Conference in 1987, it was noted that the countries which had ratified Convention No. 9 did not include the most important countries which provided seafarers for employment in ships flying the flags of other countries. It also noted that 67 years after the adoption of this Convention fee-charging agencies for the recruitment or recruitment and placing of seafarers continued to exist and, in certain parts of the world, to increase in numbers. It was further stated that at least in some countries such agencies, if properly supervised and regulated, might fulfil a practical and useful purpose for both the seafarers and the shipowners.

On the other hand, it was recognized that, in certain parts of the world, practices existed which did not conform to the provisions of Convention No. 9 and which were unfavourable to seafarers and shipowners alike. The Conference felt that governments should regulate the activities of such agencies to ensure that abuses did not occur. The Conference also requested the ILO to include on the agenda of the next session of the Joint Maritime Commission the question of the desirability of the revision of Convention No. 9, including the application to fee-charging recruitment agencies for seafarers of the principles of government supervision and control laid down in the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), for shore-based industries. Furthermore the Office was asked to collect and publish up-to-date information on the arrangements in force in various countries, particularly in labour-supplying countries, for recruiting seafarers for employment on board ships and submit such information for discussion at regional seminars. The regional seminar referred to above was a direct follow-up to the resolution.

In April 1990 a questionnaire was addressed to governments of member States requesting information on national law and practice regarding existing employment services for seafarers, both publicly operated services and those which carry on their business for profit, and on the main issues to be included in a possible revision of Convention No. 9.

The information collected was included in a report which was submitted to the 26th Session of the Joint Maritime Commission (Geneva, 17-25 October 1991). After discussing the Office report, the Commission adopted a resolution concerning placing of seafarers, requesting the Governing Body to place on the agenda of the next Maritime Session of the International Labour Conference an item on the revision of Convention No. 9.

The Governing Body, at its 252nd Session (March 1992), took note of the resolution as well as of another resolution adopted by the Commission concerning the convening of a Preparatory Technical Maritime Conference and a Maritime Session of the International Labour Conference. At its 253rd Session (May-June 1992) the Governing Body, following consultations with the leaders of the Shipowners' and Seafarers' groups of the Commission, decided to hold a tripartite meeting instead of a Preparatory Maritime Conference during the 1994-95 biennium. At its 254th Session (November 1992) the Governing Body decided to include in the programme of sectoral meetings for the 1994-95 biennium a Tripartite Meeting on Maritime Labour Standards, with an agenda including an item on "Revision of the Placing of Seamen,

Convention 1920 (No. 9)". Technically, the purpose of the Meeting was the same as that of a Preparatory Technical Maritime Conference.

The report[1] prepared for that Meeting reproduced the substance of the information submitted to the Joint Maritime Commission in October 1991, together with the information provided by governments on recent developments. It also contained Proposed Conclusions reflecting the evolution which had taken place in the recruitment and placement of seafarers worldwide and taking account of the views of the Joint Maritime Commission. These Proposed Conclusions are set out in Chapter I of this report.

Following discussion of the Office report, the Tripartite Meeting on Maritime Labour Standards adopted a revised set of Conclusions with a view to the adoption of a new Convention supplemented by a Recommendation. The proceedings of the Tripartite Meeting on Maritime Labour Standards on this item, including the relevant extracts from the report of the Committee set up to examine this question, the Proposed Conclusions submitted by that Committee and a summary of the corresponding plenary discussions, are contained in Chapter II. Chapter III includes both the English and French versions of a proposed Convention and Recommendation concerning the recruitment and placement of seafarers, based on the Conclusions adopted by the Tripartite Meeting on Maritime Labour Standards, as well as an explanation of the changes made by the Office to those texts. If the Conference so decides, Chapter III may serve as the basis for the discussion of this item.

[1] ILO: *Revision of the Placing of Seamen Convention, 1920 (No. 9)*, Report III, Tripartite Meeting on Maritime Labour Standards, Geneva, 1994.

# I. Proposed Conclusions concerning the recruitment and placement of seafarers, prepared by the Office for the Tripartite Meeting on Maritime Labour Standards

1. New international instruments concerning the recruitment and placement of seafarers should be adopted.

2. The instruments should take the form of a Convention supplemented by a Recommendation.

3. The instruments should refer in their Preamble to relevant ILO instruments, which might include the following: the Placing of Seamen Convention, 1920 (No. 9), the Seaman's Articles of Agreement Convention, 1926 (No. 22), the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), the Employment Service Convention, 1948 (No. 88), the Employment Service Recommendation, 1948 (No. 83) and the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).

## Proposed Conclusions with a view to a Convention

### I. Scope and definitions

4. For the purpose of the Convention the term "seafarers" should mean persons defined as such by national law or practice or by collective agreement.

5. To the extent it deems practicable, after consultation with the representative organizations of fishing vessels' owners and fishermen, the competent authority should apply the provisions of the Convention to fishermen.

6. Member States should specify at the time of ratification of the Convention, after consultations with the organizations of shipowners and seafarers and in accordance with national practice, in what manner the provisions of the Convention should apply to seafarers who are nationals of other States.

7. For the purpose of the Convention the term "employment agency" means any person, company, institution, agency or other organization, providing as a primary or secondary activity, directly or as an intermediary, free of charge or in exchange for financial compensation, recruitment and placement services for the employment of seafarers.

8. For the purpose of the Convention, "competent authority" means the minister, government department or other authority having power to issue regulations, orders or other instructions having the force of law in respect of the recruitment and placement of seafarers.

### II. Public employment services for seafarers

9. Each Member for which the Convention is in force should maintain a free public employment service for seafarers in the framework of a policy to meet the needs of seafarers and shipowners.

10. Such service should form part of or be coordinated with a public employment service for all workers.

11. The competent authority should take the necessary measures to secure effective cooperation between the public employment service for seafarers and employment agencies.

12. The public employment service for seafarers should be placed under the supervision and control of the competent authority.

13. The competent authority should make suitable arrangements for the cooperation of representative organizations of shipowners and seafarers in the organization and operation of the public employment service.

14. The public employment service for seafarers should, in cooperation with other concerned authorities, private employment agencies and organizations of shipowners and seafarers, collect and analyse all relevant information on the maritime labour market.

15. Public employment offices for seafarers should be established in the major ports or other places situated in the territory of a Member, as determined after consultation with the representative organizations of shipowners and seafarers.

16. The public employment offices for seafarers should:

(a) register seafarers and other persons seeking employment at sea; the register should contain information on their age, qualifications, rank and experience;

(b) obtain from shipowners precise information on vacancies and qualifications required;

(c) inform seafarers of possible employment at sea and refer them to available employment or, as appropriate, to other public employment offices or employment agencies; and

(d) provide all available information to seafarers relating to conditions of work and life on board the ship concerned.

## III. Regulation of employment agencies for seafarers

17. The competent authority may decide, after consultation with representative organizations of shipowners and seafarers, to authorize employment agencies within the meaning of the Convention.

18. Every such employment agency should:

(a) be required to be in possession of a licence renewable at the discretion of the competent authority at intervals of not more than two years;

(b) be subject to the supervision of the competent authority;

(c) only charge fees or expenses on a scale previously approved or fixed by the competent authority and not require that such fees or expenses be borne, directly or indirectly, in whole or in part by the seafarer;

(d) only place or recruit seafarers abroad if permitted to do so by the competent authority and under conditions determined by the national laws or regulations in force;

(e) ensure as far as possible that seafarers are qualified for the jobs concerned;

(f) ensure that contracts of employment and articles of agreement are in accordance with national laws and regulations;

(g) ensure that all parties are informed of their rights and duties under the contracts of employment or articles of agreement;

(h) ensure that proper facilities are assured to seafarers for examining such contracts or articles before and after signing; and

(i) examine and respond to any complaints arising out of its activities.

19. The competent authority should:

(a) ensure that employment agencies applying for a licence or its renewal conform to national laws and regulations;

(b) ensure that no fees or expenses are charged directly or indirectly to seafarers; fees or expenses, including those incurred to undergo a medical examination or to obtain a passport, seafarers' identity card, visas or other document relating to employment, should be paid by the shipowner;

(c) ensure adequate procedures for the investigation of complaints relating to the activities of employment agencies, associating, as appropriate, representatives of shipowners and seafarers;

(d) ensure that appropriate sanctions, including withdrawal of the licence, should be prescribed and enforced for violations of the national laws and regulations; and

(e) ensure that a bond, guarantee fund or similar arrangement is created from regular contributions of employment agencies in proportion to the number of seafarers recruited or placed. Any seafarer suffering any prejudice as a result of the default of an employment agency should be compensated from this fund.

### IV. General provisions

20. Freedom of choice of ship should be assured to seafarers and freedom of choice of crew should be assured to shipowners.

21. The competent authority should ensure that personal information about seafarers which is in the possession of the public employment service or employment agencies is not made available without the written permission of seafarers concerned.

## Proposed Conclusions with a view to a Recommendation

22. The provisions of the proposed Recommendation should be applied in conjunction with those of the proposed Convention.

### I. Public employment services for seafarers

23. The public employment service for seafarers provided for in point 9 of the Proposed Conclusions should ensure, in cooperation where necessary with other public and private bodies engaged in similar activities, the best possible organization of the employment market for seafarers with regard to the needs of the maritime industry at both the national and international levels.

24. The public employment service for seafarers should, pursuant to point 14 of the Proposed Conclusions, collect and analyse all relevant information on the maritime labour market, including:

(a) the current and prospective supply of seafarers classified by age, rank and qualifications and the industry's requirements;

(b) possibilities of employment for nationals on foreign ships;

(c) continuity of employment;

(d) the placement of trainees and cadets; and

(e) vocational guidance for prospective seafarers.

25. As far as possible the staff of the public employment service for seafarers should be adequately trained persons having practical maritime experience.

### II. Associations of employment agencies for seafarers

26. The competent authority should encourage employment agencies to form associations. These associations should be encouraged to adopt a code of conduct or code of ethics and, as appropriate, to make proposals to the competent authority concerning the qualifications required to open an employment agency.

## III. International cooperation

27. International cooperation between public employment services and employment agencies should be encouraged by member States and may include:

(a) systematic exchange of information on the demand for and supply of seafarers on a bilateral, regional and multilateral basis;

(b) exchange of information on maritime labour legislation;

(c) harmonization of policies, working methods and legislation governing recruitment and placement of seafarers; and

(d) improvement of procedures and conditions for the international recruitment and placement of seafarers.

# II. Proceedings of the Tripartite Meeting on Maritime Labour Standards concerning the revision of the Placing of Seamen Convention, 1920 (No. 9)

## Extracts from the report of the Committee on Placing of Seamen

### Composition of the Committee

1. The Committee on Placing of Seamen was set up by the Tripartite Meeting on Maritime Labour Standards at its third plenary sitting on 29 November 1994 ... composed of ... 26 Government members, 14 Shipowner members and 17 Seafarer members. It also included 13 Shipowner deputy members and 23 Seafarer deputy members ...

2. At its first sitting, the Committee elected its officers as follows:

*Chairperson:* Mr. L. Palma (Government member, Philippines).

*Vice-Chairpersons:* Mr. J. Smith (Shipowner member, Liberia); and Mr. L. Barnes, (Seafarer member, India).

*Reporter:* Mr. C.E. Krusa (Government member, United States).

3. The Committee held six sittings.

4. At its third sitting, the Committee set up a working group ...

5. At its fifth sitting, the Committee decided to set up a drafting committee ...

. . . . . .

### Introduction

7. Introducing the report, the representative of the Secretary-General indicated that it had been prepared on the basis of the replies to two questionnaires on national law and practice submitted to member States in 1990 and 1993. Besides historical background to the revision of Convention No. 9, the report reviewed the law and practice with respect to the recruitment and placement of seafarers in the countries which provided the Office with information and contained the text of "revised" standards as proposed by the Office. Referring to the work of the Joint Maritime Commission (JMC) on the revision of Convention No. 9, the representative of the Secretary-General outlined the guidelines given by the JMC on the possible contents of the revised Convention. He specially stressed the principle supported by all the groups that a seafarer should not have to pay to find a job.

8. The representative of the Secretary-General recalled the conclusions adopted by the 81st (1994) Session of the International Labour Conference on the role of private employment agencies in the functioning of labour markets. In particular, these conclusions called for a revision of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), and had been referred to the Governing Body of the ILO for consideration as a possible agenda item for a future ILO Conference. The JMC had proposed that the revision of Convention No. 9 be based on the provisions of Convention No. 96. Reference was also made to the proposal for a form of guarantee for wages, repatriation and other liabilities in case of insolvency of recruitment agencies. This proposal was based on some of the provisions of the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173).

### General discussion

9. Speaking on behalf of the Shipowners' group, the Shipowner Vice-Chairperson submitted three reasons in support of the revision of Convention No. 9. First, abuse and

exploitation of seafarers by manning agents continued, and many cases were reported where unqualified, ill-disciplined or medically unfit seafarers had been supplied to ships. Second, the Convention was largely ineffective in preventing such abuses as few of the major labour-supplying countries, particularly in the Asian region, had ratified the instrument. Lastly, the Convention reflected the thinking prevailing at the time of its drafting when commercial employment services were not considered acceptable. The practice was now viewed quite differently. The positive contribution of such commercial agencies to the benefit of both seafarers and shipowners was now well recognized. This was reflected in the resolution adopted by the 26th Session of the Joint Maritime Commission in 1991 as well as in the debate held in the 81st Session (1994) of the International Labour Conference on fee-charging employment agencies. This broad consensus needed to be reflected in a revised text.

10. The Shipowner Vice-Chairperson suggested three principles which should guide the revision of the Convention and the Recommendation. First, any new Convention should be widely accepted, ratified and enforced. The adoption of an instrument which would not be enforced in the major labour-supplying countries would fail to improve the situation. Second, international controls on employment services of seafarers should apply to all institutions whether public or private, commercial or not. Thirdly, the revised instrument should not aim to determine the type of institution deemed suitable for the purpose of finding employment for seafarers, but rather to set the standards with which all agencies should comply.

11. The Shipowner Vice-Chairperson indicated that his group would be submitting a number of amendments along those lines. In particular, he wished to remove from the Proposed Conclusions on a Convention, provisions which could discourage ratification. He also wished to ensure that the content of the Recommendation was strengthened.

12. Speaking on behalf of the Seafarers' group, the Seafarer Vice-Chairperson underlined that Convention No. 9 had been adopted in 1920 at a time when seafarers were exploited by fee-charging employment agencies. Seventy years later, seafarers in developing countries were still exploited by commercial employment services, whether States had or had not ratified the Convention. The root of the problem was that too many seafarers were being trained but failed to find employment thereafter. Trained seafarers waited three or four years for a placement and then another three or four years to secure a job. In many cases fees were paid to obtain employment out of turn. India, he stated, had addressed this problem, which was now less acute, by limiting training to seafarers sponsored by shipowners for the first two placements and offering a stipend during periods of unemployment. These measures had gradually introduced an equilibrium in supply and demand. Other countries should consider taking similar measures in order to reduce supply.

13. The Seafarer Vice-Chairperson made reference to the Employment of Seafarers Recommendation, 1970 (No. 139), which called on the establishment of national manpower plans as well as to the Continuity of Employment (Seafarers) Convention, 1976 (No. 145), which sought to ensure continuous and regular employment for qualified seafarers. At present, there was no such continuity and regularity in employment. This was the major cause of the many malpractices in employment services. The Seafarer Vice-Chairperson reiterated his group's opposition to fee-charging employment services, and stated his group's preference for direct hiring by shipowners although his group had not closed its mind entirely on this issue and would be prepared to listen to the views of the Shipowners' group and those of the Governments.

14. The Government member of the Netherlands indicated that he could agree to the proposed content of the revised Convention and Recommendation, although some points needed clarification. He mentioned in particular the reference to a guarantee fund which would place too heavy a burden on governments.

15. The Government member of the Russian Federation expressed his support for the revision of Convention No. 9. He explained that his country had only limited and recent

experience in supplying labour to the fleets of other countries. The guarantee fund proposal posed some difficulties. His Government was of the view that employment services should be under government control and be licensed accordingly.

16. The Government member of Germany stated that the Proposed Conclusions provided a good basis for a revised Convention and Recommendation. He would introduce some amendments, particularly on the proposed guarantee fund, which, in his view, could be replaced with a form of third-party liability insurance. He shared the view that any instrument suggesting the abolition of private employment agencies would fail to secure ratification. Rather, provisions were required to regulate the activities of private employment agencies. He observed that as the International Labour Conference had agreed at its 81st (1994) Session to recommend the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), it would seem sensible to closely coordinate this revision with that of Convention No. 9 with a view to integrating the two instruments. He pointed out the potential difficulty of two separate and possibly conflicting instruments being put to ratification.

17. The Government member of Denmark was generally satisfied with the proposed text of the Convention, but had some difficulties with the Recommendation. The free placement of seafarers and the licensing of private employment agencies were both important, particularly to flag States, for safety at sea and for environmental considerations. It was important to stress the responsibility of employment agencies with regard to verifying the validity and authenticity of certificates. This was particularly important for seafarers recruited from a third country. Regarding the proposal for a guarantee fund, his Government would prefer alternative proposals based on insurance policies, and greater clarity as to what was covered.

18. The Seafarer Vice-Chairperson stressed that his group took strong exception to the use of the expression "exporting of seafarers". He recalled the Declaration of Philadelphia which embraced the principle that labour was not a commodity. The Chairperson assured the Seafarer Vice-Chairperson that any Committee member's use of the phrase was clearly inadvertent since each and every member of the Committee agreed that labour was not a commodity. The Chairperson offered his apologies to the Seafarers' group on behalf of the Committee as a whole.

19. The Government member of the United States explained that in his country no private commercial employment agencies catered to the needs of merchant seafarers. He suggested that consideration be given to a certification procedure such as the one applied to union hiring halls in his country. He indicated that his Government would have a problem with the proposal for a guarantee fund.

20. The Government member of France expressed his support for the revision of Convention No. 9. His Government was not opposed to private employment agencies although its preference went to public employment services. In France, private employment agencies were only envisaged for special occupational categories under strict government control and as an exception to the public monopoly on placement. He shared the reservations of previous speakers on the guarantee fund proposal, but would concur with an insurance mechanism.

21. The Government member of Norway stated that the Proposed Conclusions provided a good basis for discussion. He noted that in a number of cases the recruitment and placement practices for seafarers did not follow the provisions laid down in Convention No. 9. He pointed out that manning agencies were at times seen as the responsible employer and not the shipowners.

22. The Shipowner Vice-Chairperson expressed his disagreement with the suggestion to combine the revision of Conventions Nos. 96 and 9. He restated the view that the shipping industry was quite different from other industries, and especially as concerned employment issues. Convention No. 96 sought to regulate employment services within a country, whereas Convention No. 9 needed to take account of the international dimension of the industry.

23. The Employer member of the Governing Body delegation informed the Committee that in considering proposals for items on the agenda of the 84th Session (1997) of the International Labour Conference, the Governing Body had made no such link between the two instruments. A majority of the Governing Body had expressed its continued support for separate maritime instruments as well as for a Maritime Session of the International Labour Conference possibly in early 1996.

24. The Government member of India stated that, in view of the fact that his country made available large numbers of seafarers to other countries, the Government had introduced minimum conditions for the recruitment of seafarers. He observed that training and qualifications of seafarers were of critical importance and wished to see this importance reflected in the revised instruments under consideration.

25. The Secretary of the Seafarers' group indicated that although a number of general Conventions were applicable to seafarers, the latter's special situation frequently required separate treatment. Another Seafarer member pointed out that private employment agencies in the United States were closely linked to the shipowners. The problems lay with private agencies rather than with manning pools operated by the unions.

26. The Secretary of the Shipowners' group, commenting on the proposal for a guarantee fund, observed that the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), did not exclude seafarers and hence there was little point in including an additional provision in Convention No. 9 concerning that point. He further observed that problems were encountered with all types of employment agencies, whether public or private. He reiterated the Shipowners' view that the same controls should apply to all types of agencies.

27. The Government member of Australia indicated that the distinction between public and private employment agencies was not quite so simple, as some public agencies operated along commercial lines. He concurred with the view that all types of agencies should be handled in the same way.

28. The Seafarer Vice-Chairperson stated that it was essential to protect the wages of seafarers, commonly paid at the end of their voyage, often eight to ten months long, and to ensure their repatriation in case of bankruptcy of the shipowner. In India, the unions sought at times to obtain bank guarantees in case of doubt. The suggested measures, in the form of bonds, bank guarantees and insurance required further discussion.

## Proposed Conclusions concerning the recruitment and placement of seafarers

29. The Committee had before it 111 amendments to the Proposed Conclusions which were to serve as a basis for the drafting of new international instruments concerning the recruitment and placement of seafarers.

30. In view of the large number of proposed amendments and the variety of viewpoints expressed therein, the Committee decided to set up a working group which would amalgamate the various amendments and thus facilitate work in the plenary sittings. The Committee also decided that some of the basic issues, such as definitions, should first be discussed by the whole Committee.

31. The Committee agreed that the term "seafarers" should be defined. Concern was, however, expressed about the Seafarer members' proposal also to define the term "ship" and to include fishermen in the definition of seafarers. The Government member of the United States strongly felt that the inclusion of fishermen would pose problems and expressed preference for restricting the proposed Convention to seafarers working on commercial vessels. The Government members of India and the Russian Federation concurred with this opinion in view of the differences in national legislation, national authorities, ownership, unionization and training practices. The Government member of the Russian Federation also pointed to the

existence of separate Conventions on fishermen and believed that it would be improper for the Committee to draft an international instrument affecting a certain category of workers without first consulting them. The Government member of Japan considered that the instruments adopted should apply to the fishing industry. However, the Government member of Australia and a Seafarer member drew attention to the fact that in those Conventions adopted in 1987 concerning seafarers, the inclusion or not of fishermen in the category of seafarers was left to the discretion of national authorities. A Seafarer member further argued that fishermen needed protection since many of them were being left stranded throughout the world.

32. While not objecting to the formulation of protective measures for those who were recruited through private employment agencies, a Shipowner member cautioned against adopting a definition which could be interpreted as including entertainers or musicians. He pointed to the ramifications this might have for agencies employing entertainment personnel.

33. The Shipowner Vice-Chairperson underlined the importance of securing wide ratification and application for the proposed Convention. This could best be achieved by a short Convention to be supplemented by a more detailed Recommendation. The Shipowner members had therefore proposed to delete a number of the Conclusions now contained in the part relating to a draft Convention with a view to including them in a Recommendation. The Seafarer Vice-Chairperson was, however, not convinced of the need to keep the Convention short.

34. The Chairperson also sought clarification on other questions of principle, such as (i) whether it should be mandatory for governments to operate a public employment service for seafarers; (ii) whether agencies operated by governments should be subject to the same regulations; and (iii) the circumstances under which private employment agencies should be permitted to operate.

35. The Seafarer Vice-Chairperson was of the opinion that the establishment of public employment services should be left to the discretion of the governments. He recalled that these services were so expensive that many countries could not afford them. He preferred a situation in which various types of services could operate side by side, including free public employment services. His views were shared by the Shipowner Vice-Chairperson.

36. A number of Government members opposed the obligation on the part of governments to establish an employment service. However, the Government member of Germany pointed out that the Employment Service Convention, 1968 (No. 88), made the maintenance of a free public employment service mandatory and consequently it was not prudent to contradict this provision in another ILO Convention. He highlighted the importance of free placement services which were not bound by any particular interest of either shipowners or seafarers. He proposed that in countries in which a cost-free, neutral and unbiased service was provided by a private service, there would be no need to press for the establishment of a public employment service.

37. Several Government members, among them those of Liberia, the Russian Federation, the United Kingdom and the United States, believed that private employment agencies were able to provide the required services according to international standards and national legislation. Consequently public employment services should not be mandatory. In certain countries the creation of such public services would not be possible at all. It was therefore more important to ensure that employment services, regardless of their mode of operation, be subject to licensing or other forms of supervision, under government control.

38. The Seafarer Vice-Chairperson stated that his group did not wish to distinguish between agencies and services. He proposed that all of them, regardless of their nature, be called "services". They could be "services rendered or operated by the State", "services operated jointly by seafarers and shipowners", "services operated by shipowners themselves", "services operated by seafarers' unions" or "services run on a commercial basis". The Shipowner Vice-Chairperson concurred in principle with the proposal of the Seafarer Vice-Chairperson. The proposal was also seconded by the Government member of Australia. However, he pointed out that Conventions were intended to have a long life span while services

might quickly change their nature. Consequently, the Convention should not be restricted by a listing of such services. Since there was a consensus on the question, the Committee agreed that for the purposes of the new instruments, all employment agencies and services, whether public or private, would be referred to as "services".

39. The Committee instructed the working group to consider the amendments submitted and provide the Committee with revised texts taking into consideration the views expressed by the members of the Committee. The Committee's discussion of these new texts are summed up in the following sections.

## Proposed Conclusions with a view to a Convention

40. The Committee had before it the report of the working group (PS/INF.1) containing the draft text of the proposed Convention as revised by the working group on the basis of the amendments received from the Government, Shipowner and Seafarer members of the Committee. The Chairperson encouraged the Government members in particular to examine whether their own amendments had been given adequate consideration by the working group. The Committee agreed that if members of the Committee did not take the opportunity to raise the concerns addressed in their amendments the relevant amendments would be considered as withdrawn.

### *Points 1 and 2*[1]

41. Since there were no amendments received to points 1 and 2, the Committee adopted them as they stood.

### *Point 3*

42. In response to the Chairperson's proposal to delete the point, the Seafarer members requested that it be retained, pointing to their amendment in which they wished to make reference to 12 Conventions and Recommendations, instead of the six listed in the Office text. While some Government members believed that only the most essential Conventions and Recommendations should be recalled in the Preamble, others, including the Shipowner Vice-Chairperson were ready to accept the proposal on condition that the final decision would be taken by a Maritime Session of the International Labour Conference. With this understanding the Committee adopted point 3 as amended by the Seafarer members.

### *Point 4*

43. The discussion concerning point 4 focused on whether or not to qualify the term "ship" by the word "seagoing". The Seafarer Vice-Chairperson recalled that his group had proposed an amendment which reflected their desire to define the term "vessel" in more detail. Since this proposal had not been supported, he suggested at least retaining the word "seagoing". The Shipowner Vice-Chairperson was ready to retain the word "seagoing" and repeated his earlier statement that there was no need to define the term "vessel". The Government members of Australia and the Netherlands expressed their agreement with this position. The Committee decided to retain the word "seagoing".

### *Point 5*

44. The Committee debated whether to make it mandatory for governments to apply the provisions of the Convention also to fishermen and to seafarers serving on maritime mobile offshore units. While not objecting to the inclusion of fishermen, the Government member of Japan was not in favour of extending coverage to maritime mobile offshore units. The Secretary of the Seafarers' group stated that the provision would only cover seafarers. The words "to the

[1] References below to numbered points are to those in the draft text approved by the Committee.

extent it deems practicable" also provided for a certain flexibility. The Government member of Japan insisted, however, on the right of governments to decide whether or not fishermen should be included. The Committee approved the subamendment of the Government member of the Netherlands to extend the proposed consultation to owners of maritime mobile offshore units and insert after the words "fishing vessel owners and fishermen" the words "and owners of maritime mobile offshore units" and adopted the point as subamended.

*Point 6*

45. The Shipowner members considered point 6 of the Office text to be superfluous and suggested deletion. The Seafarer members wanted to ensure that all seafarers, including foreign nationals, be equally protected. Point 6 should therefore be retained. The Government member of Sweden stated that in view of the fast-changing nature of international relations and the long-lasting obligations of ratifying governments, no such statements as suggested in point 6 should be included. The Government member of Australia stressed that the draft Convention was addressed to employment agencies which were already subject to the jurisdiction of the countries in which they operated. The Chairperson pointed out that the deletion of this paragraph would not keep a government from applying the Convention also to foreign nationals. The Committee decided to delete point 6.

*Point 7*

46. In response to the inquiry by the Government member of Liberia concerning the primary or secondary activity of employment agencies, the Chairperson recalled that companies might have more than one activity and that it was important to ensure that placement services were covered by the proposed Convention regardless of whether or not they represented the primary activity of a company.

47. The Government member of France wished to put on record that the proposal to refer to both agencies and services as "services" would cause confusion to French-speaking persons, for whom the term "service" denoted a section of a public authority devoted to a particular matter. With his statement going on record, he did not object to the adoption of point 7. In his response, the Chairperson recalled that in a multicultural setting it was to be expected that persons from different backgrounds would attach different connotations to a certain term. Moreover, he drew attention to the initial words of point 7, which read: "For the purposes of this Convention ...". The Committee adopted point 7 as proposed by the working group.

*Point 8*

48. The Government member of Liberia objected to restricting the definition of "public authority" to "the minister, government department or other authority" on the grounds that in some cases it was an official other than the minister who would issue the relevant regulations or orders. In order to take this concern into account the Committee adopted point 8 with the insertion of the word "official", after the word "minister".

*Point 9*

49. In view of the apparent contradiction between point 9, which enabled governments to decide whether or not to maintain a public employment service for seafarers, and Convention No. 88, which made the establishment of such services mandatory, the Government member of Germany proposed the deletion of point 9. However, other Government members spoke in favour of retaining it: the Government member of Australia pointed out that some provisions of the proposed Convention referred also to public services and, together with the Government member of the United States, he stressed the importance of introducing the principle of both public and private employment services in the first part of the draft Convention; the Government member of the Russian Federation also highlighted the usefulness of public employment services. The Committee adopted point 9 as proposed by the working group.

*Point 10*

50. This point, which had been debated at length and had been substantially revised in the working group, was also subject to various queries in the Committee. The Government member of Germany wished to delete the words "and agreement" and introduce the phrase "as appropriate". Without this modification, the Convention would give the social partners a direct role in developing legislation and consequently his Government would find it difficult to ratify such a Convention. The deletion of the words "and agreement" was supported by the Shipowner members and by all Government members. Consequently, the Seafarer members also joined the consensus. The Committee decided to delete the words "and agreement".

51. Turning to the question of the need for governments to consult with the representative organizations of shipowners and seafarers prior to authorizing private employment services to operate in their territory, the Government of Germany strongly felt that such consultation should be voluntary. Others, including the Government members of Australia and France as well as the Shipowner Vice-Chairperson, explained that the provision was intended to make consultation mandatory only when a system of licensing was being established, and not prior to the issue of every licence. Consultation was therefore mandatory when it concerned the principle, but not when it concerned an individual case. The Seafarer members expressed concern at the proposal to include the words "as appropriate", because they feared that this would provide governments with the possibility of avoiding consultations.

52. The Government members of Canada and Germany recalled that legislation already existed in many countries concerning the licensing of private employment services. For such countries point 10 had no relevance. The Chairperson suggested adding the following sentence: "This is without prejudice to laws already in existence at the time of ratification." To enable the Committee to find a compromise, a Shipowner member proposed the following alternative wording: "The competent authority, after consultation with representative organizations of shipowners and seafarers, may establish a system of licensing, certification or other authorization providing that private employment services for seafarers may operate within the territory of the Member." The Committee decided to request the drafting committee to examine the various proposals and to prepare wording which included the concerns expressed in the course of the debate. The drafting committee proposed the following text: "The competent authority, after consultation with representative organizations of shipowners and seafarers, may permit private employment services for seafarers to operate within the territory of the member State, based on a system of licensing, certification or similar authorization."

*Point 11*

*Subpoint (a)*

53. The Committee adopted subpoint (a) without comments.

*Subpoint (b)*

54. The Committee adopted subpoint (b) with a minor drafting amendment proposed by the Government member of India, according to which the text of the subpoint was to read: "require that no fees or other charges ...".

*Subpoint (c)*

55. The second part of this subpoint, referring to the placement or recruitment of seafarers abroad, included a sentence in square brackets to read: "It shall be incumbent on national administration to adopt such laws and regulations." The Seafarer Vice-Chairperson who had made this proposal decided to withdraw it. The first part of the subpoint was adopted as it stood.

*Subpoints (d) and (e)*

56. The Committee adopted subpoints (d) and (e) without comments.

*Subpoint (f)*

57. The Seafarer Vice-Chairperson proposed to amend the subpoint by substituting the words "seafarers and their representatives" for the term "parties". According to him, seafarers would be better protected if their representatives were also informed about the rights and duties of seafarers as specified in their contracts. The Government members of Australia and France opposed this proposal on the grounds that the contract was between two parties only, namely the seafarer and the employer. In addition, a Shipowner member stressed that this provision would be practically impossible to implement. The suggestion of the Government member of the United States to replace the word "parties" by the word "seafarers" met with general agreement.

58. The Government member of Liberia proposed to further amend the text of the subpoint by including, prior to the word "engagement", the words "or in the process of". Since there was no objection to this amendment, the Committee adopted the subpoint as amended by the Government members of the United States and Liberia.

*Subpoint (g)*

59. The Seafarer Vice-Chairperson proposed to insert after the words "contracts of employment", the words "and articles of agreement". He wanted to ensure that seafarers had full knowledge of the contents of the articles of agreement when signing on a vessel. However, the Shipowner Vice-Chairperson recalled the informal agreement between the two groups not to reintroduce amendments which had not been accepted in the working group. The Seafarer Vice-Chairperson also suggested adding the words "after the seafarer joins the ship;" at the end of the subpoint after the words "as well as articles of agreement", deleting thereby the words "if at all possible". The Committee adopted the subpoint as amended.

*Subpoints (h), (i) and (j)*

60. The Committee adopted subpoints (h), (i) and (j) without comment.

*Point 12*

61. The Government member of Greece proposed adding the words "at least" after the phrase "The competent authority should". This suggestion was opposed by both the Seafarer and the Shipowner Vice-Chairpersons, who stressed that the aim of the Convention was to produce minimum standards. The Government member of Greece thus withdrew his amendment. The Committee adopted the first line of the point.

*Subpoint (a)*

62. A Seafarer member proposed that the sentence be amended by inserting the word "similar" before the word "authorization". The Committee adopted the subpoint as amended.

*Subpoint (b)*

63. Subpoint (b) included a sentence in square brackets which requested the competent authorities to ensure that fees or expenses, including those incurred to undergo a medical examination or to obtain a passport, seafarers' identity card, visas or other documents relating to employment, be paid by the employer. The Seafarer members were of the opinion that the obtention of these documents was in the interest of the employers and consequently payment of all related bills was their responsibility. The Government member of Australia recalled the statements made by several Government members in the working group, which clearly indicated that documents, such as passports or visas were considered personal documents, which had to be paid for by the person concerned. He was supported by the Government members of Canada, Japan, the Netherlands, the United Kingdom and the United States. The Government member of Liberia, for his part, concurred with the Seafarer members. The Government member of Spain stated that in his country these expenses were borne in part by his Government. The

Government members of Australia, Norway, Spain and the United States proposed to delete the sentence in question because they objected to the notion that competent authorities should be required to collect the fees from the shipowners rather than from the person concerned. The Seafarer Vice-Chairperson, supported by the Government member of India, suggested referring the matter to a drafting committee. Taking note of the request by the Shipowner and the majority of the Government members to delete the sentence, the Seafarer members proposed to take up the issue again when the Recommendation was discussed. The Committee adopted the subpoint with the deletion of the second sentence.

*Subpoints (c) and (d)*

64. Subpoints (c) and (d) were adopted as they stood.

*Subpoint (e)*

65. In view of the inability of his Government to ensure the establishment of a guarantee fund, the Government member of the United States recommended the deletion of the entire point. A Shipowner member and the Government member of France questioned the principle of the point and wondered what was meant by "prejudice" and who would be responsible for the setting up of the fund. Referring to the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), the representative of the Secretary-General pointed out that the Office had introduced this proposal to provide protection to seafarers in the event of non-transmission of wages, since the responsibility of employment services could also include, besides recruitment, the transfer of wages and repatriation settlements. The Employer member of the Governing Body delegation expressed disapproval at the inclusion of this point into the draft Conclusions. She recalled that the questionnaire sent to member States and the social partners in order to prepare the draft Conclusions did not make reference to the creation of a guarantee fund and consequently the opinion of the ILO's tripartite constituents could not be taken into consideration. She believed that by including this item, the Office had gone beyond its mandate. The representative of the Secretary-General noted that the Office was encouraged to include the proposal by the research undertaken by the Office in preparing for the discussion on private employment agencies which had taken place at the 81st (1994) Session of the International Labour Conference. She replied that the Conference Committee, which had been engaged in a general discussion, should not be compared to a committee which was drafting a new international instrument. The Seafarer members agreed to delete the subpoint, stating that they would raise it at the forthcoming Maritime Session of the International Labour Conference. The Committee approved the deletion of the subpoint.

*Subpoint (f)*

66. Concerning the provision that the staff of the employment services for seafarers should be adequately trained persons having relevant knowledge of the maritime industry, the Government member of Greece felt that this could also cover typists or computer operators of employment services. He suggested that the phrase "as practicable" be inserted after the word "staff". After clarification of the word "relevant", he withdrew his proposal. The Committee adopted subpoint (f) without amendment.

*Point 13*

67. The Committee adopted point 13 as it stood.

*Point 14*

68. A Shipowner member proposed adding the words "on privacy" at the end of the point, on the grounds that without these words the provision was too restrictive. The Government member of the Netherlands stated that to the contrary the inclusion of that phrase would make the provision more restrictive. The Seafarer members, for their part, wished to retain the point as it stood. The Committee adopted the point without amendment.

*Other points*

69. The Chairperson informed the Committee that the working group had been unable to reach agreement on the appropriate place to include two additional points, which were drafted on the basis of points 11 and 13 of the Office text. He therefore asked for guidance concerning the inclusion of the additional points in the draft Convention or draft Recommendation. The Government members of Argentina, Australia, China, India, Japan, the Russian Federation and the United States expressed their desire to include both of them in the draft Recommendation. The Government member of the United Kingdom also noted that these points actually undermined the principle of free enterprise. The Committee decided to move these points to the draft Recommendation and to discuss the exact wording at the appropriate time.

## Proposed Conclusions with a view to a Recommendation

70. The Committee considered the document entitled "Report of the working group on the Proposed Conclusions with a view to a Recommendation concerning the placement of seamen" (PS/INF.2). The Committee proceeded to examine the document point by point.

*Point 1*

71. Point 1 was adopted without change.

*Point 2*

72. The introductory terms of point 2 and point 2(a) were adopted with no changes.

73. In subpoint 2(b), the Seafarer Vice-Chairperson suggested referring to the drafting committee the use of "should" instead of the opening "may". He further suggested the inclusion of the words "and maritime training institutions" after the words "relevant employment services". The Government member of the Netherlands expressed his reservations on this proposal. The Government member of Denmark suggested the deletion of the word "other" after "in cooperation with" on the grounds that it was not implied that public employment services were mandatory. The Government member of the Netherlands sought to introduce the terms "where appropriate" after the new wording introduced by the Seafarers, but the Government member of Australia pointed out that with the deletion of the word "other", the term "relevant" would be applicable to both "employment services" and "maritime training institutions". As amended, subpoint 2(b) was adopted.

74. Point 2(c) was adopted with no changes.

75. The Seafarer Vice-Chairperson informed the Committee that his group wished to withdraw the amendment it had proposed introducing the terms "where applicable" in subpoint 2(d)(iv). With this change, subpoint 2(d) was adopted.

76. The Seafarer Vice-Chairperson suggested the deletion of the words "where necessary" in subpoint 2(e). This was accepted and the point was so adopted.

*Point 3*

77. In point 3, the Seafarer Vice-Chairperson suggested substituting the terms "standards for business practices" with the terms "operational standards". In order to make this point consistent with the text of the proposed revised Convention, the Government delegates of France and the United States suggested the deletion of the words "and control" so as to read: "In the supervision of employment services ...". With these two changes, the point as revised was adopted.

*Point 4*

78. The opening line of point 4 was accordingly changed to read: "The operational standards" and so adopted.

79. Subpoints 4(a) and 4(b) were adopted with no changes.

80. In subpoint 4(c), the Seafarer Vice-Chairperson wished to delete the word "or" which appeared twice in the proposed text, and add at the end the following wording: "in accordance with subpoint 11(b) of the Convention". The Shipowner Vice-Chairperson explained that he could not agree to the additional wording suggested as this changed the intent of the text. Subpoint 11(b) of the Convention referred only to fees paid by seafarers in seeking employment, whereas subpoint 4(c) in the proposed Recommendation made reference to other charges incurred when entering employment. After some discussion, the Seafarer Vice-Chairperson withdrew the amendment seeking to add wording at the end of the paragraph. Subpoint 4(c) was accordingly adopted with the small wording changes introduced by the Seafarers.

*Point 5*

81. In point 5, the Government member of India sought to include the terms "by member States" in the opening line after "should be encouraged ...". The Government member of Australia agreed to the proposed changes if they did not imply that such international cooperation would be limited to governments. The Government member of the Netherlands pointed out that the wording had been so agreed upon in the working group in order to avoid such misinterpretation. The Government members of the Philippines and the United States, as well as the Shipowner Vice-Chairperson concurred with this interpretation. The Government member of Sweden suggested including the words "member States and other relevant organizations". The point, as amended, was adopted.

82. The Government member of the Netherlands queried whether point 16 of the original Office text had been retained in the proposed Convention or Recommendation. The Shipowner Vice-Chairperson explained that the working group had agreed to incorporate subpoints 16(a) and 16(d) of the Office text into the Convention, and 16(b) into the Recommendation, whereas subpoint 16(c) had been dropped. The Government member of the United States pointed out that the intent of subpoint 16(c) was reflected in the proposed Convention. The Government member of Germany confirmed this view and explained that criteria governing public employment services could not be imposed upon private agencies.

83. Subpoints 5(a) to 5(f) were adopted with no changes.

84. The drafting committee examined the draft text of the Proposed Conclusions and recommended minor changes in wording which are reflected in the Proposed Conclusions contained in this report.

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## Adoption of the report

86. At its sixth sitting on 7 December 1994, the Committee unanimously adopted the present report on its proceedings, together with the appendices, for submission to the plenary of the Meeting.

## Proposed Conclusions concerning the revision of the Placing of Seamen Convention, 1920 (No. 9), submitted by the Committee

1. New international instruments concerning the recruitment and placement of seafarers should be adopted.

2. The instruments should take the form of a Convention supplemented by a Recommendation.

3. The instruments should refer in their Preamble to relevant ILO instruments, which might include the following:

— the Placing of Seamen Convention, 1920 (No. 9);

— the Seamen's Articles of Agreement Convention, 1926 (No. 22);
— the Employment of Seafarers (Technical Developments) Recommendation, 1970 (No. 139);
— the Continuity of Employment (Seafarers) Convention, 1976 (No. 145);
— the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147);
— the Continuity of Employment (Seafarers) Recommendation, 1976 (No. 154);
— the Merchant Shipping (Improvement of Standards) Recommendation, 1976 (No. 155);
— the Seafarers' Engagement (Foreign Vessels) Recommendation, 1958 (No. 107);
— the Social Conditions and Safety (Seafarers) Recommendation, 1958 (No. 108);
— the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96);
— the Employment Service Convention, 1948 (No. 88);
— the Employment Service Recommendation, 1948 (No. 83).

## Proposed Conclusions with a view to a Convention

### *I. Scope and definitions*

4. For the purposes of the Convention the term "seafarer" should mean any person who is qualified to be employed or engaged in any capacity on board a seagoing ship.

5. To the extent it deems practicable after consultation with the representative organizations of fishing vessel owners and fishermen, as well as those of owners of maritime mobile offshore units and seafarers serving on such units, the competent authority should apply the provisions of the Convention respectively to fishermen and seafarers serving on maritime mobile offshore units.

6. For the purpose of the Convention, the term "employment service" means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged as a primary or secondary activity, directly or as an intermediary, free of charge or in exchange for financial compensation, in finding employment for a seafarer or placing a seafarer with an employer.

7. For the purpose of the Convention, "competent authority" means the minister, official, government department or other authority having power to issue regulations, orders or other instructions having the force of law in respect of the recruitment and placement of seafarers.

### *II. Regulation of employment services for seafarers*

8. Each Member for which the Convention is in force may maintain a free public employment service for seafarers in the framework of a policy to meet the needs of seafarers and shipowners. Such service may form part of or be coordinated with a public employment service for all workers.

9. The competent authority, after consultation with representative organizations of shipowners and seafarers, may permit private employment services for seafarers to operate within the territory of the member State, based on a system of licensing, certification or similar authorization.

10. All employment services should:

(a) be subject to the close supervision of the competent authority and be required to possess a licence, a certificate or a similar authorization to operate, which may be extended;

(b) require that no fees or other charges for recruitment or for providing employment for seafarers be borne directly or indirectly, in whole or in part, by the seafarer;

(c) place or recruit seafarers abroad only if permitted to do so by the competent authority and under conditions determined by the national laws or regulations;

(d) ensure that seafarers are qualified and hold the necessary certificates or, as appropriate, other relevant documents for the jobs concerned;

(e) ensure that contracts of employment and articles of agreement are in accordance with the standards laid down in the applicable laws, regulations and collective agreements;

(f) ensure that seafarers are informed of their rights and duties under their contract of employment or the articles of agreement prior to or in the process of engagement;

(g) ensure that proper arrangements are made for seafarers to examine their contracts of employment before and after they are signed, and to examine and sign the articles of agreement after joining the ship;

(h) examine and respond to any complaints arising out of their activities;

(i) advise the competent authority of complaints arising from the employment of seafarers and affecting their safety, health and welfare; and

(j) keep a register for inspection by the competent authority of all seafarers employed and placed through the employment service.

11. The competent authority should:

(a) ensure that employment services applying for a licence, certificate or similar authorization, or for their extension, conform to applicable laws and regulations;

(b) ensure that no fees or other charges for recruitment or for providing employment are charged directly or indirectly to seafarers;

(c) if necessary, ensure that adequate machinery and procedures exist for the investigation of complaints relating to the activities of employment services, involving, as appropriate, representatives of shipowners and seafarers;

(d) ensure that appropriate penalties, including, where appropriate, withdrawal of the licence, certificate or similar authorization, are prescribed and enforced for violation of the applicable laws and regulations; and

(e) require that the management and staff of the employment services for seafarers should be adequately trained persons having relevant knowledge of the maritime industry.

### *III. General provisions*

12. Freedom of choice of ship should be assured to seafarers and freedom of choice of crew should be assured to shipowners.

13. The competent authority should require that personal information about seafarers which is in the possession of the employment services is made available only in accordance with applicable laws and regulations.

## Proposed Conclusions with a view to a Recommendation

14. The provisions of the proposed Recommendation should be applied in conjunction with those of the proposed Convention.

### *I. Responsibilities of the competent authority*

15. The competent authority should:

(a) take the necessary measures to promote effective cooperation among the employment services, public or private;

(b) in cooperation with relevant employment services and maritime training institutions, tailor the employment market for seafarers to the needs of the maritime industry at both the national and international levels;

(c) make suitable arrangements for the cooperation of representative organizations of shipowners and seafarers in the organization and operation of the public employment service;

(d) maintain an arrangement for the collection and analysis of all relevant information on the maritime labour market, including:

(i) the current and prospective supply of seafarers classified by age, rank and qualifications and the industry's requirements;

(ii) the availability of employment on national and foreign ships;

(iii) continuity of employment;

(iv) the placement of apprentices, cadets and other trainees; and

(v) vocational guidance for prospective seafarers;

(e) see to it that its staff responsible for the supervision of employment services be adequately trained and have relevant knowledge of the maritime industry; and

(f) prescribe or approve operational standards and encourage the adoption of codes of conduct and ethical practices for these services.

16. The operational standards referred to in point 15(f) should include provisions dealing with:

(a) the qualifications and training required of the staff of employment services;

(b) the keeping of a register of seafarers seeking employment at sea;

(c) matters pertaining to medical examinations, vaccinations, obtaining seafarers' documents and such other items as may be required of the seafarer to gain employment.

*II. International cooperation*

17. International cooperation should be encouraged by member States and relevant organizations and may include:

(a) systematic exchange of information on the demand for and supply of seafarers on a bilateral, regional and multilateral basis;

(b) exchange of information on maritime labour legislation;

(c) harmonization of policies, working methods and legislation governing recruitment and placement of seafarers;

(d) improvement of procedures and conditions for the international recruitment and placement of seafarers;

(e) adjusting the supply of seafarers to requirements; and

(f) manpower planning.

## Discussion by the Tripartite Meeting in plenary sitting

### Extract from the summary of proceedings

[The report of the Committee on Placing of Seamen was considered by the Meeting at its fifth plenary sitting on 8 December 1994.]

*Mr. Krusa* (Government, United States; Reporter of the Committee) placed before the Meeting the Committee's report which included Proposed Conclusions concerning the revision of the Placing of Seamen Convention, 1920 (No. 9), in the form of a proposed Convention and proposed Recommendation which would be applied in conjunction with the Convention. He noted that Convention No. 9 had required updating in order to address the current situation of public and private employment services. The necessary flexibility had been provided for in

points 8 and 9 of the proposed Convention. He recommended the adoption of the report and the Proposed Conclusions by the Meeting and that an agenda item on placing of seamen should be placed on the agenda of a Maritime Session of the International Labour Conference to be held in 1996.

*Mr. Smith* (Shipowner delegate, Liberia; Vice-Chairman of the Committee) also recommended that the proposed agreed Conclusions should be forwarded to a Maritime Session of the Conference to be held in 1996. The Shipowner members asked the Meeting to adopt the report as well as the Proposed Conclusions. They would provide an excellent basis for the work of the Conference. At the Maritime Conference the Shipowners might consider to move some of the Conclusions now contained in the draft Convention to the part on the draft Recommendation. The Shipowner members were sceptical to the idea of establishing a guarantee fund even if they recognized the problems that such arrangements were designed to correct.

The Shipowner members called on Governments to review carefully the Proposed Conclusions with a view to a Convention to ensure that it would be possible for them in due course to ratify and to enforce. For the Shipowners it was important that countries — including labour-supplying countries — have legislation making it possible to end abuses to seafarers. This would also ensure that shipowners do not employ unqualified seafarers.

*Mr. Barnes* (Seafarer delegate, India; Vice-Chairman of the Committee) said that while the agreement reached was satisfactory, there are still some areas that needed to be better covered. The Seafarer members called for the abolition by ILO member States of fee-charging employment agencies. Member States should encourage free public employment services, and such services should normally be run by shipowners' and seafarers' organizations. Governments should run such services only when no seafarers' organizations were doing so. Some agencies continued to charge seafarers the costs for medical examination, visas and other documents; this was wrong and the Seafarers planned to submit proposals on this to the Conference.

The Seafarer members also felt that the question of guarantee funds was important due to the special nature of seafaring. Member States should ensure that this issue was addressed as well as the issue of repatriation of stranded seafarers. It was also the view of the Seafarers that fishermen and personnel on offshore units should be covered by the Convention. Proper monitoring of the Convention, once it was adopted, would be important. The Committee had, realizing the importance of the issue, agreed upon a long Convention and a short Recommendation. The Seafarer members did not wish to see provisions of the Convention moved to a Recommendation calling for the support of Governments in this regard.

*Mr. Palma* (Government delegate, Philippines; Chairman of the Committee) commended the Committee for its high-level debate. He also thanked the spokesmen from the Seafarers' and Shipowners' sides for their work in the Committee. He did not wish to reopen the debate, but instead encourage all concerned to reflect on the different issues raised in the Committee between now and the proposed Conference. He pledged the support of the Philippines Government towards the maritime programme of the ILO and for the holding of a Maritime Session of the International Labour Conference in 1996. He recommended the adoption by the plenary of the report of the Committee, including the Proposed Conclusions.

***The Meeting unanimously adopted the report of the Committee on Placing of Seamen.***

The Meeting then proceeded to examine the Proposed Conclusions.

***The Meeting unanimously adopted the Proposed Conclusions concerning the placing of seamen contained in the Committee's report.***

# III. Proposed texts

The texts of a proposed Convention and a proposed Recommendation concerning the recruitment and placement of seafarers are given below. They are based on the Conclusions adopted by the Tripartite Meeting on Maritime Labour Standards, rearranged and modified by the Office where it was felt necessary in order to avoid repetitions and inconsistencies. The Office has attempted to ensure that the texts retain the substance of the points adopted by the Tripartite Meeting. However, when it was felt that they could be clarified or improved, the Office has made the relevant changes and an explanation of these changes is given in the paragraphs which follow.

In the Preamble to the proposed Convention, the Office recommends that only some of the instruments listed in the Conclusions of the Tripartite Meeting should be retained. ILO practice is to limit references in a Preamble to instruments that have direct relevance to the purpose or purposes of the proposed new instrument. The instruments which most closely relate to the recruitment and placement of workers in general and seafarers in particular have therefore been kept. These are Conventions Nos. 22, 88 and 145, as well as Recommendations Nos. 83, 107, 139 and 154. In addition, Convention No. 147 has been retained as it contains a number of provisions relevant to the conditions under which seafarers should be engaged. Reference to Convention No. 9 appears in the portion of the Preamble recalling its revision as an agenda item for the Conference. Reference to Convention No. 96 has been deleted in the Preamble as the Governing Body at its 262nd Session (March-April 1995) decided to include the revision of that Convention, which does not in any event apply to seafarers, on the agenda of the 1997 Session of the International Labour Conference. The Office has introduced a preambular paragraph referring to the entry into force of the United Nations Convention on the Law of the Sea, 1982, in response to an appeal made by the United Nations General Assembly in resolution 49/28 of 19 December 1994 to identify measures that may need to be taken "with a view to ensuring a uniform, consistent and coordinated approach to the implementation of the provisions of the Convention throughout the United Nations system". This insertion by the Office is also to ensure consistency between the various ILO instruments under discussion.

In Article 1, paragraph 1 (point 6 of the Conclusions), and throughout the text, the term "recruitment and placement service" is used instead of "employment service" in order to designate more clearly the entity engaged in the activities contemplated in the definition. In existing ILO instruments, and particularly the Employment Service Convention, 1948 (No. 88), "employment service" means a public service which provides a wide range of services relating to employment. It may include, but is not limited to, "recruitment and placement". In the context of the proposed instruments, however, the term "recruitment and placement" corresponds more precisely to what was agreed by the Tripartite Meeting, without leading to the confusion that another use of the term "employment service" might create.

The Office has replaced the words "finding employment for a seafarer" (point 6) with "recruiting seafarers on behalf of employers". The definition of "seafarer" would then reflect the two activities of recruitment and placement services, namely recruiting seafarers on behalf of shipowners and placing seafarers with shipowners.

In Article 1, paragraph 1, the Office has deleted the words "directly or as an intermediary", as recruitment and placement services are usually "intermediaries" although they may sign contracts of employment on behalf of employers.

In Article 1, paragraph 1(c) (point 4), the Office suggests that the word "eligible" be used instead of "qualified", which could be interpreted to mean holding a certificate or already having specified work experience. As for the definition of "seagoing ship" in the same subparagraph the Office proposes to exclude "military or coast-guard ship". The Convention would then cover persons looking for employment on ships of all types, including for example

large private yachts, fishing vessels and mobile offshore units. According to the proposed Article 1, paragraph 2, the competent authority may, after consulting the representative organizations of employers and workers concerned, exclude persons seeking employment on fishing vessels and mobile offshore units (point 5).

In Article 2, the Office has included the two principles accepted by the Tripartite Meeting, namely that private recruitment and placement services may be operated under a Member's supervision through licensing, certification or similar authorization after consultations with the relevant organizations (paragraph 1) and that a Member can also maintain a free public recruitment and placement service (paragraph 2; see points 8, 9 and 11(d)). The words "and employers" have been added to paragraph 2 since public employment services are operated for the benefit of both workers and employers. This also makes it parallel to the earlier phrase "seafarers and shipowners" in the same provision.

In Articles 3, 4 and 5, the Office has rearranged a number of provisions previously contained in points Nos. 10, 11 and 12 of the Conclusions of the Tripartite Meeting. These Articles lay down the obligations of the Members, the competent authority and of the recruitment and placement services. In order to avoid repetition and to reflect the actual obligations to be assumed by ratifying Members, the new draft provides that the Member, through the competent authority or otherwise, has to ensure that recruitment and placement services abide by the provisions concerned.

Article 3, paragraph 1 (point 10(b)), lays down that the principle of "no fees to seafarers" should be embodied in national laws or regulations. The Office understands that union dues should not be considered to be fees for recruitment and placement purposes when the union provides recruitment and placement services as part of the wider range of services furnished by the union concerned. However, it is also understood that the recruitment and placement services provided by trade unions should be otherwise subject to the same supervision as services provided by other entities. Paragraph 1(c), on the protection of the personal data of seafarers, has been modified to indicate more precisely the areas which require particular attention, namely "collection, storage, combination and communication to third parties" (point 13). In paragraph 2(b), the term "renew" is used instead of "extend" (point 10(a)).

In Article 4, the Office has grouped the provisions which relate to the responsibilities of recruitment and placement services as regards their day-to-day operations. Most of these provisions are based on relevant provisions in the Seamen's Articles of Agreement Convention, 1926 (No. 22). In paragraph 2(d), the Office has modified the provision adopted by the Tripartite Meeting to allow seafarers to examine their contracts of employment and the articles of agreement "before and after they are signed" (point 10(f)). The Office understands that in some cases, the articles of agreement being "on board ship" are not customarily seen by seafarers when they sign their contract of employment at their point of recruitment. With the technology available today, it should be possible for seafarers to be aware of all their duties, responsibilities and entitlements before they leave their point of recruitment, i.e. upon signing their contract of engagement. The Conference may therefore wish to amend the Office text to reflect this, replacing "before and after they are signed" by "upon and after the signing of the contract of employment". Such a change could in practice facilitate and improve the supervision exercised by the competent authority on the conditions of work and life of seafarers engaged on a foreign-registered ship. The contents of the articles of agreement should be compatible with and not inferior to the provisions of the contract of employment in order to ensure that seafarers obtain what they have been promised. A copy of the articles of agreement could easily be telefaxed to the recruitment and placement service.

The Office has grouped the provisions on complaints and complaint procedure in Article 5. Paragraph 1 covers the obligations of the recruitment and placement services (point 10(i)) while paragraph 2 deals with the responsibilities of the competent authority (point 11(c)).

In Article 6 (point 12), the shipowners' freedom of choice of crew is not intended to exclude shipowners from an obligation of compliance with applicable laws and regulations aimed at ensuring freedom of association or at the prevention of discrimination or forced labour. The text of Article 6 came from Article 6 of Convention No. 9 (which has been reworded in French to correspond better to the English text).

In the proposed Recommendation, some elements of Paragraph 1 are based on the contents of the Employment of Seafarers (Technical Developments) Recommendation, 1970 (No. 139).

In Paragraph 1(d), the word "sex" has been inserted for consistency with the Labour Statistics Recommendation, 1985 (No. 170), which provides that statistics should be disaggregated with regard to the sex of the workers concerned.

In Paragraph 3, the Office has added the words "of the maritime industry" in subparagraph (e) and has replaced "manpower planning" in subparagraph (f) by "workforce planning". These changes are not intended to alter the substance of these provisions.

Finally, the Office would like to draw the attention of the Conference to the proposal submitted by the Office to the Tripartite Meeting regarding arrangements for the compensation of seafarers and shipowners who have incurred loses as a result of the default of a recruitment and placement service. The Office had originally proposed that the competent authority should ensure that a bond, guarantee fund or similar arrangement is created from regular contributions of employment agencies in proportion to the number of seafarers recruited or placed, and that any seafarer suffering any prejudice as a result of the default of an employment agency should be compensated from this fund. Different views were expressed by the participants of the Tripartite Meeting on the appropriateness of including such a provision, and the Meeting decided not to include the paragraph in its agreed Conclusions. The Office has therefore not included any such provision in the proposed text of the new instruments. It should be noted, however, that in some countries recruitment and placement services cannot operate without a bond or bank guarantee. Furthermore, in accordance with the United Nations Convention on Conditions for Registration of Ships, 1986, seafarers are to be protected in case of default of a shipowner. Under that instrument, the State of ship registration needs to ensure "that an appropriate mechanism, such as a maritime lien, mutual fund, wage insurance, social security scheme, or any governmental guarantee provided by an appropriate agency of the State of the accountable person, whether that person is an owner or operator, exists to cover wages and related monies owed to seafarers employed on ships flying its flag in the event of default of payment by their employers. The State of registration may also provide for any other appropriate mechanism to that effect in its laws and regulations." The Conference could therefore consider the need for including provisions on similar arrangements covering recruitment and placement for seafarers' services, since these are frequently responsible for the transmission of wages and repatriation. Bearing this in mind, the Conference could give consideration to the following text: "The competent authority shall ensure that a bond, guarantee fund or similar arrangement is maintained to compensate seafarers and shipowners having incurred a monetary loss as a result of the default of a recruitment and placement service."

## PROPOSED TEXTS

*(English version)*

The following are the English versions of (A) the proposed Convention and (B) the proposed Recommendation concerning the recruitment and placement of seafarers, which are submitted as a basis for a single discussion at the 84th (Maritime) Session of the Conference, as the third item on the agenda.

### A. Proposed Convention concerning the recruitment and placement of seafarers

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-Fourth Session on ... 1996, and

Noting the provisions of the Seamen's Articles of Agreement Convention, 1926, the Employment Service Convention and Recommendation, 1948, the Seafarers' Engagement (Foreign Vessels) Recommendation, 1958, the Employment of Seafarers (Technical Developments) Recommendation, 1970, the Continuity of Employment (Seafarers) Convention, and Recommendation, 1976, and the Merchant Shipping (Minimum Standards) Convention, 1976, and

Recalling the entry into force of the United Nations Convention on the Law of the Sea, 1982, on 16 November 1994, and

Having decided upon the adoption of certain proposals with regard to the revision of the Placing of Seamen Convention, 1920, which is the third item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts, this ... day of ... of the year one thousand nine hundred and ninety-six, the following Convention, which may be cited as the Recruitment and Placement of Seafarers Convention (Revised), 1996:

*Article 1*

1. For the purpose of this Convention:

(a) the term "competent authority" means the minister, official, government department or other authority having power to issue regulations, orders or other instructions having the force of law in respect of the recruitment and placement of seafarers;

(b) the term "recruitment and placement service" means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged as a primary or secondary activity, free of charge or in exchange for financial compensation, in recruiting seafarers on behalf of employers or placing seafarers with employers;

(c) the term "seafarer" means any person who is eligible to be employed or engaged in any capacity on board a seagoing ship other than a military or coast-guard ship.

## PROPOSED TEXTS

*(French version)*

The following are the French versions of (A) the proposed Convention and (B) the proposed Recommendation concerning the recruitment and placement of seafarers, which are submitted as a basis for a single discussion at the 84th (Maritime) Session of the Conference, as the third item on the agenda.

### A. Projet de convention concernant le recrutement et le placement des gens de mer

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le ..... 1996, en sa quatre-vingt-quatrième session;

Notant les dispositions de la convention sur le contrat d'engagement des marins, 1926, de la convention et de la recommandation sur le service de l'emploi, 1948, de la recommandation sur l'engagement des gens de mer (navires étrangers), 1958, de la recommandation sur l'emploi des gens de mer (évolution technique), 1970, de la convention et de la recommandation sur la continuité de l'emploi (gens de mer), 1976, et de la convention sur la marine marchande (normes minima), 1976;

Rappelant l'entrée en vigueur, en date du 16 novembre 1994, de la convention des Nations Unies sur le droit de la mer, 1982;

Après avoir décidé d'adopter diverses propositions relatives à la révision de la convention sur le placement des marins, 1920, question qui constitue le troisième point à l'ordre du jour de la session;

Après avoir décidé que ces propositions prendraient la forme d'une convention internationale,

adopte, ce ..... jour de ..... mil neuf cent quatre-vingt-seize, la convention ci-après, qui sera dénommée Convention sur le recrutement et le placement des gens de mer (révisée), 1996.

*Article 1*

1. Aux fins de la présente convention:

*a)* l'expression "autorité compétente" désigne le ministre, le fonctionnaire, le service gouvernemental ou toute autre autorité habilitée à édicter règlements, arrêtés ou autres instructions ayant force obligatoire en matière de recrutement et de placement des gens de mer;

*b)* l'expression "service de recrutement et de placement" désigne toute personne, société, institution, agence ou autre organisation du secteur public ou privé exerçant, à titre principal ou secondaire, gratuit ou payant, des activités relatives au recrutement des gens de mer pour le compte d'employeurs ou au placement de gens de mer auprès d'employeurs;

*c)* l'expression "gens de mer" désigne toute personne ayant qualité pour être employée ou recrutée, à quelque titre que ce soit, à bord de tout navire de mer autre qu'un navire affecté à des fins militaires ou de surveillance côtière.

2. After consulting with the representative organizations of employers and workers concerned, the competent authority may exclude from the application of the Convention the recruitment and placement of persons for employment on fishing vessels and mobile offshore units.

*Article 2*

1. Private recruitment and placement services may be operated within the territory of a Member only in conformity with a system of licensing, certification or similar authorization. This system shall be established or maintained only after consultation with representative organizations of shipowners and seafarers.

2. Nothing in this Convention shall be deemed to prevent a Member from maintaining a free public recruitment and placement service for seafarers in the framework of a policy to meet the needs of seafarers and shipowners, whether it forms part of or is coordinated with a public employment service for all workers and employers.

*Article 3*

1. A Member shall, by means of national laws or regulations:

(a) ensure that no fees or other charges for recruitment or for providing employment to seafarers are borne directly or indirectly, in whole or in part, by the seafarer;

(b) determine whether and under which conditions recruitment and placement services may place or recruit seafarers abroad;

(c) specify the conditions under which seafarers' personal data may be processed by recruitment and placement services including the collection, storage, combination and communication of such data to third parties; and

(d) determine the conditions under which the licence, certificate or similar authorization of a recruitment and placement service may be suspended or withdrawn in case of violation of applicable laws and regulations.

2. A Member shall ensure that the competent authority:

(a) closely supervise all recruitment and placement services;

(b) grant or renew the licence, certificate, or similar authorization only after having verified that the recruitment and placement service concerned meets the requirements of national laws and regulations; and

(c) require that the management and staff of recruitment and placement services for seafarers should be adequately trained persons having relevant knowledge of the maritime industry.

*Article 4*

1. All recruitment and placement services shall keep a register of all seafarers recruited or placed through them, to be available for inspection by the competent authority.

2. All recruitment and placement services shall ensure that:

(a) any seafarers recruited or placed by them are qualified and hold the certificates and other documents necessary for the jobs concerned;

2. Après consultation des organisations représentatives des employeurs et des travailleurs intéressées, l'autorité compétente peut exclure de l'application de la convention le recrutement et le placement de personnes à bord des bateaux de pêche ou des unités mobiles au large des côtes maritimes.

*Article 2*

1. Les services de recrutement et de placement privés ne pourront exercer leur activité sur le territoire d'un Membre que dans le cadre d'un système de licence, de certificat ou autre autorisation similaire. Un tel système devra être établi ou maintenu après consultation des organisations représentatives des armateurs et des gens de mer.

2. Rien dans la présente convention n'est censé affecter la possibilité pour tout Membre d'assurer un service public gratuit de recrutement et de placement pour les gens de mer dans le cadre d'une politique visant à répondre aux besoins des gens de mer et des armateurs, que ce service fasse partie du service public de l'emploi ouvert à l'ensemble des travailleurs et des employeurs ou agisse en coordination avec ce dernier.

*Article 3*

1. Tout Membre doit, par voie de législation nationale:

*a)* s'assurer qu'aucuns honoraires ou autres frais destinés au recrutement ou à l'emploi des gens de mer ne sont, directement ou indirectement, en totalité ou en partie, à la charge de ceux-ci;

*b)* décider si et dans quelles conditions les services de recrutement et de placement peuvent placer ou recruter des gens de mer à l'étranger;

*c)* spécifier les conditions dans lesquelles les renseignements personnels sur les gens de mer peuvent être traités par les services de recrutement et de placement, y compris aux fins de collecte, de conservation, de recoupements ou de communication à des tiers;

*d)* fixer les conditions dans lesquelles la licence, le certificat ou l'autorisation similaire peuvent être suspendus ou retirés en cas d'infraction à la législation applicable.

2. Tout Membre doit faire en sorte que l'autorité compétente:

*a)* supervise étroitement tous les services de recrutement et de placement;

*b)* n'accorde ou ne renouvelle la licence, le certificat ou l'autorisation similaire qu'après avoir vérifié si les services de recrutement et de placement concernés remplissent les conditions prévues par la législation nationale;

*c)* s'assure que la direction et le personnel des services de recrutement et de placement pour les gens de mer sont des personnes convenablement formées et ayant une connaissance appropriée du secteur maritime.

*Article 4*

1. Tous les services de recrutement et de placement doivent, aux fins d'inspection par l'autorité compétente, conserver un registre de tous les gens de mer recrutés ou placés par leur intermédiaire.

2. Tous les services de recrutement et de placement doivent s'assurer:

*a)* que les gens de mer recrutés ou placés par leur intermédiaire possèdent, pour l'exercice des emplois considérés, les qualifications requises ainsi que les certificats et autres documents nécessaires;

(b) contracts of employment and articles of agreement are in accordance with applicable laws, regulations and collective agreements;

(c) seafarers are informed of their rights and duties under their contracts of employment and the articles of agreement prior to or in the process of engagement; and

(d) proper arrangements are made for seafarers to examine their contracts of employment and the articles of agreement before and after they are signed.

*Article 5*

1. All recruitment and placement services shall examine and respond to any complaints concerning their activities and shall advise the competent authority of such complaints.

2. The competent authority shall ensure that adequate machinery and procedures exist for the investigation, if necessary, of complaints concerning the activities of recruitment and placement services, involving, as appropriate, representatives of shipowners and seafarers.

*Article 6*

Freedom of choice of ship shall be assured to seafarers and freedom of choice of crew shall be assured to shipowners.

*Article 7*

This Convention revises the Placing of Seamen Convention, 1920.

## B. Proposed Recommendation concerning the recruitment and placement of seafarers

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-fourth Session on ... 1996, and

Having decided upon the adoption of certain proposals with regard to the revision of the Placing of Seamen Convention, 1920, which is the third item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Recruitment and Placement of Seafarers Convention (Revised), 1996,

adopts, this ... day of ... of the year one thousand nine hundred and ninety-six, the following Recommendation, which may be cited as the Recruitment and Placement of Seafarers Recommendation, 1996:

1. The competent authority should:

(a) take the necessary measures to promote effective cooperation among recruitment and placement services, whether public or private;

*b)* que les contrats de travail et les contrats d'engagement sont conformes à la législation et aux conventions collectives applicables;

*c)* que les gens de mer sont informés de leurs droits et obligations en vertu de leur contrat de travail et de leur contrat d'engagement, préalablement à l'engagement ou au cours du processus d'engagement;

*d)* que les dispositions nécessaires sont prévues pour que les gens de mer puissent examiner leur contrat de travail et leur contrat d'engagement avant et après leur signature.

*Article 5*

1. Toute plainte afférente aux activités d'un service de recrutement et de placement doit faire l'objet par ce dernier d'un examen et d'une réponse et être portée à la connaissance de l'autorité compétente.

2. L'autorité compétente doit s'assurer que des mécanismes et procédures appropriés existent en vue, si nécessaire, d'enquêter au sujet des plaintes relatives aux activités des services de recrutement et de placement, avec le concours, lorsqu'il y a lieu, des représentants des armateurs et des gens de mer.

*Article 6*

Les gens de mer doivent pouvoir choisir leur navire et les armateurs leur équipage.

*Article 7*

La présente convention révise la convention sur le placement des marins, 1920.

## B. Projet de recommandation concernant le recrutement et le placement des gens de mer

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le ..... 1996, en sa quatre-vingt-quatrième session;

Après avoir décidé d'adopter diverses propositions relatives à la révision de la convention sur le placement des marins, 1920, question qui constitue le troisième point à l'ordre du jour de la session;

Après avoir décidé que ces propositions prendraient la forme d'une recommandation destinée à compléter la convention sur le recrutement et le placement des gens de mer (révisée), 1996,

adopte, ce ..... jour de ..... mil neuf cent quatre-vingt-seize, la recommandation ci-après, qui sera dénommée Recommandation sur le recrutement et le placement des gens de mer, 1996.

1. L'autorité compétente devrait:

*a)* prendre les mesures nécessaires pour promouvoir une coopération efficace entre les services de recrutement et de placement, qu'ils soient publics ou privés;

(b) in cooperation with relevant recruitment and placement services and maritime training institutions, tailor the employment market for seafarers to the needs of the maritime industry at both the national and international levels;

(c) make suitable arrangements for the cooperation of representative organizations of shipowners and seafarers in the organization and operation of the public recruitment and placement services where they exist;

(d) maintain an arrangement for the collection and analysis of all relevant information on the maritime labour market, including:

(i) the current and prospective supply of seafarers classified by age, sex, rank and qualifications and the industry's requirements;

(ii) the availability of employment on national and foreign ships;

(iii) continuity of employment;

(iv) the placement of apprentices, cadets and other trainees; and

(v) vocational guidance of prospective seafarers;

(e) see to it that the staff responsible for the supervision of recruitment and placement services be adequately trained and have relevant knowledge of the maritime industry; and

(f) prescribe or approve operational standards and encourage the adoption of codes of conduct and ethical practices for these services.

2. The operational standards referred to in paragraph 1(f) should include provisions dealing with:

(a) the qualifications and training required of the management and staff of recruitment and placement services;

(b) the keeping of a register of seafarers seeking employment at sea;

(c) matters pertaining to medical examinations, vaccinations, seafarers' documents and such other items as may be required for the seafarer to gain employment.

3. International cooperation should be encouraged between Members and relevant organizations and may include:

(a) the systematic exchange of information on the maritime labour market on a bilateral, regional and multilateral basis;

(b) the exchange of information on maritime labour legislation;

(c) the harmonization of policies, working methods and legislation governing recruitment and placement of seafarers;

(d) the improvement of procedures and conditions for the international recruitment and placement of seafarers;

(e) the adjustment of the supply of seafarers to the requirements of the maritime industry; and

(f) workforce planning.

*b)* en coopération avec les services de recrutement et de placement et les établissements de formation maritime intéressés, ajuster le marché de l'emploi des gens de mer aux besoins du secteur maritime, aux niveaux national et international;

*c)* prendre des dispositions appropriées en vue de la coopération des organisations représentatives des armateurs et des gens de mer à l'organisation et au fonctionnement des services publics de recrutement et de placement là où ils existent;

*d)* disposer d'un mécanisme en vue de la collecte et de l'analyse des informations pertinentes sur le marché du travail maritime, en ce qui concerne notamment:

i) l'offre actuelle et prévisible de gens de mer classés par âge, sexe, grade et qualifications ainsi que les besoins du secteur;

ii) l'offre d'emplois sur les services nationaux et étrangers;

iii) la continuité de l'emploi;

iv) le placement des apprentis, élèves officiers et autres stagiaires;

v) l'orientation professionnelle des futurs gens de mer;

*e)* faire en sorte que le personnel responsable de la surveillance des services de recrutement et de placement soit convenablement formé et possède une connaissance appropriée du secteur maritime;

*f)* prescrire ou approuver des normes de fonctionnement et encourager l'adoption de codes de déontologie ou d'éthique pour ces services.

2. Les normes de fonctionnement visées au paragraphe 1 *f)* devraient inclure des dispositions relatives:

*a)* aux qualifications et à la formation requises de la direction et du personnel des services de recrutement et de placement;

*b)* à la tenue d'un registre concernant les gens de mer à la recherche d'un embarquement;

*c)* aux questions relatives aux examens médicaux, aux vaccinations, aux documents nécessaires aux gens de mer et à toutes autres formalités auxquelles ces derniers doivent satisfaire pour obtenir un emploi.

3. La coopération internationale devrait être encouragée entre les Membres et les organisations intéressées et pourrait comprendre:

*a)* l'échange systématique d'informations sur la situation du marché du travail maritime sur une base bilatérale, régionale et multilatérale;

*b)* l'échange d'informations sur la législation du travail maritime;

*c)* l'harmonisation des politiques, des méthodes de travail et de la législation régissant le recrutement et le placement des gens de mer;

*d)* l'amélioration des procédures et des conditions relatives au recrutement et au placement des gens de mer sur le plan international;

*e)* l'ajustement de l'offre de gens de mer aux besoins du secteur maritime;

*f)* la planification de la main-d'œuvre.

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